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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/515,014	02/29/2000	Patrick F. Coleman	09197-008810US	1609

7590 12/29/2004

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EXAMINER

BROWN, TIMOTHY M

ART UNIT	PAPER NUMBER
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1648

DATE MAILED: 12/29/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Advisory Action

Application No.

09/515,014

Applicant(s)

COLEMAN ET AL.

Examiner

Tim Brown

Art Unit

1648

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 19 October 2004 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

PERIOD FOR REPLY [check either a) or b)]

- a) ☒ The period for reply expires 5 months from the mailing date of the final rejection.
- b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.
- ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☒ A Notice of Appeal was filed on 25 October 2004. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2. ☐ The proposed amendment(s) will not be entered because:
- (a) ☐ they raise new issues that would require further consideration and/or search (see NOTE below);
- (b) ☐ they raise the issue of new matter (see Note below);
- (c) ☐ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
- (d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____

3. ☒ Applicant's reply has overcome the following rejection(s): claim 6 under 35 U.S.C. section 112, second paragraph.
4. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
5. ☒ The a) ☐ affidavit, b) ☐ exhibit, or c) ☒ request for reconsideration has been considered but does NOT place the application in condition for allowance because: See Continuation Sheet.
6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
7. ☒ For purposes of Appeal, the proposed amendment(s) a) ☐ will not be entered or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: _____

Claim(s) objected to: _____

Claim(s) rejected: 1-12.

Claim(s) withdrawn from consideration: _____


8. ☐ The drawing correction filed on _____ is a) ☐ approved or b) ☐ disapproved by the Examiner.

9. ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____

10. ☒ Other: See Continuation Sheet

Continuation of 5. does NOT place the application in condition for allowance because: claim 1 is not allowable. As amended, claim 1 requires "at least one polypeptide having one of the following polypeptided sequences." Applicants argue that this amendment overcomes the rejection of claim 1 as anticipated by Kang because Kang teaches a polypeptide comprising SEQ ID NO:3, and not a polypeptide consisting of SEQ ID NO:3 as required by amended claim 1. The Examiner respectfully submits that Kang still anticipates claim 1 because the term "having" is the same as "comprising;" even though Kang's protein is larger than the claimed polypeptide, it still "has" SEQ ID NO:3 as part of its sequence. Accordingly, Kang anticipates the claimed invention. For at least this reason, the application has not been placed in condition for allowance.

Continuation of 10. Other: Applicants' substitute specification is approved for entry. The filing receipt submitted with this reply shows that the pages previously denied entry for constituting new matter (see Office Action of April 23, 2002) did in fact form a part of the application as originally filed..


JAMES HOUSEL 12/26/04
SUPERVISORY PATENT EXAMINER
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